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FILED
 SUPERIOR COURT of CALIFORNIA
 COUNTY of SANTA BARBARA

JAN 24 2005

GARY M. BLAIR, Executive Officer
Carrie L. Wagner
 CARRIE L. WAGNER, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SANTA BARBARA**
 10 **SANTA MARIA DIVISION**

11 ~~PROPOSED~~ REDACTED VERSION OF RESPONSE

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
 13 Plaintiff,

14 v

15
 16 MICHAEL JOE JACKSON,
 17 Defendant.
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No. 1133603

PLAINTIFF'S RESPONSE TO
 DEFENDANT'S IN LIMINE
 MOTION TO PRECLUDE
 REFERENCE TO HIS
 COLLECTION OF [REDACTED] AS

DATE: January 28, 2005
 TIME: 9:30 a.m.
 DEPT: TBA (Melville)

~~UNDER SEAL~~

21 A. Introduction

22 In his "Motion in Limine to Preclude Reference to Materials as [REDACTED],"
 23 Defendant moves for an order prohibiting the prosecutors and all witnesses "from making any
 24 references in the presence of jurors or prospective jurors that any books, magazines,
 25 photographs, and computer generated images of disrobed women and men . . . as
 26 [REDACTED] or any similar term."

27 The asserted ground for his motion is that the words "[REDACTED] and
 28

PLAINTIFF'S RESPONSE TO MOTION TO PRECLUDE REFERENCE TO [REDACTED] AS

1 [REDACTED] convey "legal conclusion[s] contrary to fact" and would tend to "create an
2 improper inference that the materials, books and photographs in question[] are somehow
3 unlawful contraband that fall within statutory definitions of illegal [REDACTED]"

4 **B. Response**

5 "Obscene matter" is defined by Penal Code section 311, subdivision (a) as "'matter,
6 taken as a whole, that to the average person, applying contemporary statewide standards,
7 appeals to the prurient interest, that is, taken as a whole, depicts or describes sexual conduct in
8 a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or
9 scientific value."

10 Personal possession of "obscene" material in the privacy of one's home is not a
11 crime. (*Stanley v. Georgia* (1969) 394 U.S. 557 [89 S.Ct. 1243, 22 L.Ed.2d 542].)

12 "Pornography" is not separately defined in the Penal Code. Webster's Dictionary
13 defines it as "a portrayal of erotic behavior designed to cause sexual excitement." (Webster's
14 3d New Internat. Dict. (1981) p. 1767.)

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 We do not mean to be critical:
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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CONCLUSION

The Court has had an opportunity to examine the magazines, books, photographs and video material seized by the investigators in this case. The People will, of course, abide with whatever limitations the Court sees fit to impose on our reference to [REDACTED]

[REDACTED]

DATED: January 24, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR.
District Attorney

By: LSI
Gerald McC. Franklin, Senior Deputy
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California 93101.

Redacted

On January 24, 2005, I served the within PLAINTIFF'S RESPONSE TO DEFENDANT'S IN LIMINE MOTION TO PRECLUDE REFERENCE TO HIS COLLECTION OF SEXUALLY EXPLICIT MATERIAL AS "PORNOGRAPHY" on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by delivering a true copy to Attorney Sanger's officer and causing a true copy to be transmitted to Mr. Mesereau at the facsimile number given us by counsel, and then causing that copy to be mailed to Mr. Mesereau at the address shown on the Service List.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 24th day of January, 2005.

Gerald McC. Franklin
Gerald McC. Franklin

SERVICE LIST

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